

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21188

Application **31502** of

Oakdale Irrigation District and
South San Joaquin Irrigation District
P.O. Box 1158
Pinecrest, CA 95364-0158

filed on **April 28, 2004**, has been approved by the State Water Resources Control Board (State Water Board)
SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source:

Middle Fork Stanislaus River

Tributary to:

**Stanislaus River thence
San Joaquin River**

within the County of Tuolumne

2. Location of point of diversion

By California Coordinate System of 1927 in Zone 3	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
<u>POINT OF DIVERSION – Donnells Dam</u> North 666,600 feet and East 2,154,800 feet	NE ¼ of SE ¼	35	6N	18E	MD

3. Purpose of use	4. Place of use	Section	Township	Range	Base and Meridian	Acres
Hydroelectric Power Generation	<u>Donnells Powerhouse</u> NW ¼ of NE ¼	31	5N	18E	MD	

The place of use is shown on map filed with the State Water Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **170 cubic feet per second** to be diverted from **January 1 through December 31** of each year. The maximum amount diverted under this permit shall not exceed **50,000** acre-feet per year.
(0000005A)
6. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2016.
(0000009)
7. Water diverted under this permit is for non-consumptive use and is to be released to Beardsley Reservoir, on the Middle Fork Stanislaus River, within the NW ¼ of NE ¼ of Section 31, T5N, R18E, MDB&M.
(0000111)
8. The Permittee shall comply with all conditions established in the Water Quality Certification issued by the State Water Board on September 14, 2005 for the Tri-Dam Project (Beardsley/Donnells Hydroelectric Project).
(0300300)
9. If it is determined after permit issuance that the as-built conditions of the project are not correctly represented by the map(s) prepared to accompany the application, permittee shall, at his expense have the subject map(s) updated or replaced with equivalent as-built map(s). Said revision(s) or new map(s) shall be prepared by a civil engineer or land surveyor registered or licensed in the State of California and shall meet the requirements prescribed in section 715 and sections 717 through 723 of the California Code of Regulations, Title 23. Said revision(s) or map(s) shall be furnished upon request of the Chief, Division of Water Rights.
(0000030)
10. All rights and privileges to appropriate water for power purposes under this permit and any subsequently issued license are subject to depletions resulting from future upstream appropriation for domestic and stockwatering uses within the watershed. Such rights and privileges under this permit may also be subject to future upstream appropriations for uses within the watershed other than domestic and stockwatering if and to the extent that the Board determines, pursuant to Water Code Sections 100 and 275, that the continued exercise of the appropriation for power purposes is unreasonable in light of such proposed uses. Any such determination shall be made only after notice to permittee or licensee of an application for any such future upstream appropriation and the opportunity to be heard; provided, that a hearing, if requested, may be consolidated with the hearing on such applications.
(000000I)
11. No water shall be used under this permit until all necessary federal, state and local approvals have been obtained, including compliance with any applicable Federal Energy Regulatory Commission requirements.
(000000J)
12. Permittee shall forward to the State Water Board all pertinent Federal Energy Regulatory Commission filings that may impact the diversion and use of water associated with this project.
(000000J)
13. The State Water Board reserves continuing authority to examine fishery and public trust uses as they relate to this permit and to modify the terms of this permit accordingly to the extent that federal law in effect at the time of the modification allows. No action will be taken pursuant to the permit term unless

the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with the public interest, and is necessary to preserve or restore uses protected by the public trust.

(000000J)

14. Permittee shall, prior to new construction, file a Report of Waste Discharge pursuant to Water Code Section 13260 with the California Regional Water Quality Control Board, Central Valley Region (Regional Board), and shall comply with all Waste Discharge Requirements issued by the Regional Board. If the Regional Board waives issuance of Waste Discharge Requirements, permittee shall comply with Parts I and II of the "Guidelines for Protection of Water Quality During Construction and Operation of Small Hydro Projects" (Guidelines) as contained in the Water Quality Control Plans of the Central Valley Basin.

Specific requirements set forth in this permit shall prevail over any specific or general requirements in the referenced Guidelines in the event of conflict.

When complying with the Guidelines, pursuant to this condition, permittee shall not commence construction until the Erosion Control Plan and any baseline data required by the Guidelines have been submitted to and approved in writing by the Regional Board; and before commencing sluicing operations, permittee shall submit and receive written approval from the Regional Board of the Sluicing Operation Plan.

(0000102)

ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants.
(0000006)
- B. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board (State Water Board) until a license is issued.
(0000010)
- C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said SWRCB, reasonable access to project works to determine compliance with the terms of this permit.
(0000011)
- D. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

- E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the permittee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

- F. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 - 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

- G. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605.

(0000015)

- H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the State Department of Fish and Game and the permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary for this permitted project, the permittee shall provide the Division of Water Rights a copy of a waiver signed by the State Department of Fish and Game.

(0000063)

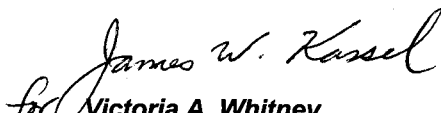
This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefore shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney
Division Chief

Dated: AUG 30 2007

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Application 31502

of

Oakdale Irrigation District and South San Joaquin Irrigation District

ORDER APPROVING ISSUANCE OF PERMIT

SOURCE: Middle Fork Stanislaus River tributary to Stanislaus River thence San Joaquin River
COUNTY: Tuolumne

WHEREAS:

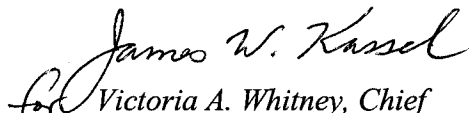
1. Application 31502 of Oakdale Irrigation District and South San Joaquin Irrigation District (Districts) was filed with the State Water Resources Control Board (State Water Board) on April 28, 2004. The application is to appropriate additional water for hydropower generation at the Districts' existing Donnell's facilities on the Middle Fork of the Stanislaus River. The Districts' Donnell's facilities are part of the Tri-Dam Hydroelectric Project.
2. The applicant requests a right to directly divert up to 170 cubic feet per second (cfs) of water, with a maximum diversion cap of 50,000 acre-feet per annum, at the existing Donnell's Reservoir for hydropower generation. Diversion of water for hydropower generation is considered a beneficial use of water under California Code of Regulations, title 23, division 3, section 662.
3. The State Water Board has determined that there is unappropriated water available to serve Application 31502. In December 2002, the Districts filed an application with the Federal Energy Regulatory Commission (FERC) for re-licensing their Tri-Dam Hydroelectric Project (FERC Project No. 2005). The FERC application includes hydrologic studies regarding the project's potential impact on water supplies in the Middle Fork Stanislaus River. It was determined that the project's operation will not impact consumptive withdrawal of water downstream of the project. The only consumptive downstream water right that could be impacted is that of Tuolumne Utilities District (TUD). TUD has a contractual right to take up to 600 cfs of water from the downstream end of Donnell's Penstock when Donnell's Dam spills. However, TUD advised the Districts that at this time it has no plans to apply for the necessary water right permits, construct the withdrawal facility and compensate Tri-Dam Project for lost power generation. The Districts have concluded that continued operation of the Project will not impact existing municipal and domestic water supply use since there is none. Further, continued operation of the project may facilitate the future development of municipal and domestic water supply use.
4. There were no protests to approval of the application.
5. The State Water Board determined conditions required to protect water quality in its review of the application for water quality certification in connection with the re-licensing proceeding before

FERC. On September 14, 2005, the State Water Board issued a water quality certification for the Tri-Dam Project.

6. During the water quality certification process, the State Water Board, as a responsible agency, reviewed and considered the proposed project and conditions incorporated into the project to protect the environment pursuant to the California Environmental Quality Act. The Tri-Dam Project, as lead agency, prepared a Mitigated Negative Declaration for this project (State Clearinghouse Number 2004102061), adopted on November 18, 2004. The State Water Board filed a Notice of Determination pursuant to its water quality certification on September 19, 2005. The State Water Board will file a Notice of Determination within five days of issuance of this water right permit.
7. This project is subject to federal regulation by FERC and is required to operate in accordance with the requirements of its federal power license. Application of state water right law to federally licensed hydropower projects is subject to preemption except as appropriate for regulation and protection of proprietary water rights. (*California v. Federal Energy Regulatory Commission* (1990) 495 U.S. 490; *Sayles Hydro Assocs. v. Maughan* (9th Cir. 1993) 985 F. 2d 451.) Due to federal preemption of state law, the State Water Board has not evaluated the effects of the proposed water diversions on fish, wildlife, or other instream beneficial uses, or public trust issues in the context of processing this water right application.

NOW, THEREFORE, IT IS ORDERED THAT A PERMIT IS ISSUED FOR APPLICATION 31502, subject to the conditions of the attached permit.

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney, Chief
Division of Water Rights

Dated: **AUG 30 2007**

Attachment